

United States Department of the Air Force

Air Education and Training Command Air Force Center for Environmental Excellence (AFCEE)



Privatization of Military Family Housing AETC Group I

Solicitation No. AFCEE-05-0004

APPENDIX M Forward Commitment

**STEP ONE PROPOSALS ARE DUE NO LATER THAN
5:00 P.M. EST 7 March 2005 AT:**

PSC MILITARY HOUSING COMPANY
132 South 600 East
Salt Lake City UT 84102
Voice 866-801-2253 Fax 801-363-1912
Email binks@psc-evg.com
Web site www.pscmhc.com

APPENDIX M. FORWARD COMMITMENT

[Letterhead of Air Force]

[Date]

[Borrower]

Re: Forward Commitment to Fund Direct Loan in Connection with Military Housing Privatization Project for AETC Group I

The undersigned acting on behalf of the Secretary of the Air Force (the “Secretary” or the “Government”), subject to the terms and conditions of this commitment letter (this “Commitment”), commits (i) to make the Direct Loan (as defined below) to the Borrower (as defined below) and (ii) to guarantee the Senior Loan (as defined below) to be made by the Senior Lender (as defined below) to the Borrower in connection with the Borrower’s development and operation of the Project (as defined below).

1. Definitions

The terms defined in this Section 1 (except as herein otherwise expressly provided or unless the context otherwise requires), for all purposes of this Commitment, shall have the respective meanings specified in this Section 1.

“Borrower” means the Project Owner, _____, a _____, or any of its successors or assigns which is approved as the owner of the Project by the Secretary and which is the borrower under a guaranteed loan, a direct loan or any other financing secured by a mortgage on the project.

“Business Day” means any day other than a Saturday, a Sunday, or a day on which the federal government is generally closed by statute, regulation, or executive order.

“Commitment Date” means the date indicated on the first page of this Commitment.

“Construction Lender” means _____, a _____, including any of its successors, assigns, or agents as designated in the Construction Loan Documents, in its capacity as a lender providing financing for the rehabilitation and/or construction of the Project.

“Construction Loan” means the mortgage loan made by the Construction Lender to the Project Owner in the original principal amount of \$XX, which loan is secured by the liens, security interests and rights affecting the Property, and improvements located thereon, evidenced by the Construction Loan Documents, and all indebtedness arising under the Construction Loan Documents and secured thereby.

“Closing Date” means the date on which the Direct Loan and the Senior Loan are closed, including the execution and delivery of all documents and the satisfaction of all other conditions required under this Commitment, and the date on which said loans are funded; which Closing Date must occur by the Expiration Date indicated in Section 2.

“Day” means a calendar day unless otherwise specified in writing in the project document.

“Direct Loan” means the permanent loan in original principal amount of \$XX (Not greater than \$70M) made to the Project Owner by the Government.

“Direct Loan Documents” means the mortgage, the note, and any related documents, as they may be amended or modified in accordance with their terms, evidencing or securing the obligations of the Borrower and Secretary with respect to the Direct Loan.

“Final Plans” means the final development plans and specifications submitted for use in connection with the construction and development of the Project, and approved by the Government in accordance with the Project Documents as the same may from time to time be supplemented or amended with the Government’s approval.

“Guaranty Agreement” means the Military Housing Loan Guaranty Agreement executed between the Government and the Senior Lender pursuant to which the Government has agreed to guarantee the Senior Loan.

“Land” means the real estate located off the Installation which the Project Owner is developing as part of the Project.

“Lease of Property” means the Department of the Air Force Lease of Property by and between the Secretary of the Air Force and the Project Owner, as amended and modified from time to time.

“Project” means a privately owned rental housing development consisting of improvements located or to be located on the Land, as described in and required to be designed, constructed, operated, maintained, demolished, replaced and rehabilitated in accordance with the Project Documents.

“Project Documents” means the documents issued or executed in connection with the Project, including, but not limited to, the Selected Proposal, Lease of Property, Operating Agreement, Lockbox Agreement, Use Agreement, and other agreements.

“Project Site” means the land and/or the Leased Premises on which the Project is developed by the Project Owner.

“Selected Proposal” means the proposal, including any and all amendments, prepared by or on behalf of the Project Owner, and selected by the Government as the winning proposal in response to the RFP.

“Senior Lender” means the maker of a mortgage loan, its successors and/or permitted assigns, that extends DoD guaranteed loans to the private sector for financing of the Project. In this transaction, the Senior Lender is _____, a lender approved or pending approval by the DoD.

“Senior Loan” means a first lien mortgage loan in the original principal amount approved by the government, from the Senior Lender to the Borrower, which is guaranteed by the Secretary, under certain specified limited circumstances pursuant to the terms of the Guaranty Agreement.

“Senior Loan Documents” means the note, the security instrument, and any related documents, as they may be amended or modified in accordance with their terms, evidencing or securing the obligations of the Borrower and Senior Lender with respect to the Senior Loan.

“Solicitation” means United States Department of the Air Force Solicitation Number _____, including any and all amendments.

2. Expiration of Commitment

The Direct Loan and the Senior Loan must be closed and delivered to the Government in accordance with the terms and conditions of this Commitment no later than _____, 20____ (the “Expiration Date”), or this Commitment shall expire and shall be without further force and effect; provided, however, that the Expiration Date shall be extended if and to the extent that the completion date for the Project is extended in accordance with the Project Documents.

3. Scheduling the Closing Date

Upon the request of the Borrower, the Closing Date may occur at any time prior to the Expiration Date; provided that the Borrower must notify the Government at least thirty (30) business days prior to the proposed Closing Date. Unless the Government notifies the Borrower within ten (10) business days of the Government’s receipt of such request from the Borrower to the contrary, and provided that all of the conditions of this Commitment have then been satisfied, the Closing Date shall be the date requested by the Borrower.

4. Agreement to Provide Direct Loan and Description of Direct Loan

The Government hereby commits to make the Direct Loan to the Borrower, subject to the terms and conditions of this Commitment, and in the event such terms and conditions have been satisfied, the Government shall be obligated to fund the Direct Loan.

a. Material Terms of Direct Loan

Set forth below are some of the material terms of the Direct Loan.

- (1) The maximum principal amount may not exceed \$70,000,000 provided that in no event shall the original principal amount of the Direct Loan exceed 50% of the total permanent debt financing for the Project.
- (2) The interest rate on the principal balance outstanding under the Direct Loan shall be a fixed rate of interest as determined by the Government and the Borrower prior to Closing; provided that in no event shall the interest rate be less than nor greater than 5.62%. Interest shall be calculated on the basis of a 360-day year and charged for the actual number of days in an interest period.
- (3) The Direct Loan shall have a term of 360 months and an amortization period of 360 months. Monthly installments of principal and interest shall be in such amounts as to fully amortize the Direct Loan over its term. The first payment to principal (commencement of amortization) shall be the first day of the first month following the month of Closing.

- (4) “Maturity date: xxx months from the date of the execution of this Commitment.
- (5) The Direct Loan may be prepaid in whole or in part without the payment of any prepayment premium or penalty on the first day of any month at any time during its term upon 60 days notice to the Government.
- (6) The lien of the Direct Loan shall be subordinate only to the lien of the Senior Loan on the Borrower’s interest in the Project and Borrower’s personalty and subject to such other exceptions as the Government shall approve.
- (7) The Direct Loan shall be a permanent loan only. The proceeds of the Direct Loan may be used only to repay in whole or in part the Construction Loan and to pay transaction costs of the Borrower incurred in connection with the Direct Loan as approved by the Government. With the agreement of the Borrower, the proceeds of the Direct Loan may be disbursed by the Government directly to the Construction Lender for application to the repayment of the Construction Loan. Unless otherwise agreed by the Government, the proceeds of the Direct Loan shall be disbursed concurrently with the disbursement of the Senior Loan.
- (8) The conditions precedent to making the Direct Loan shall be the satisfaction of all conditions set forth in this Commitment and such other conditions as are reasonably required by the Government based on the final underwriting of the Direct Loan.
- (9) The debt service coverage ratio for the aggregate of the Direct Loan and Senior Loan shall not be less than 1.05.

Other material terms of the Direct Loan shall be determined by the Government based on the final development and financing plan to be submitted by the Borrower in furtherance of the Selected Proposal and the Final Plans.

b. Direct Loan Documents and Closing Requirements

The Direct Loan shall be evidenced in part by a note and security instrument (mortgage) substantially in the form attached to this Commitment as Exhibit C (or such form as otherwise prescribed or approved by the Government), subject only to such changes and modifications as the Government shall approve. Other Direct Loan Documents and closing requirements shall be specified by the Government and shall generally be consistent with the types of documents and requirements utilized by commercial mortgage lenders in connection with loan transactions of the type, character, and size contemplated by the Commitment (e.g., title insurance, survey, Borrower’s counsel opinion, etc.). All of the foregoing documents shall be in form and substance satisfactory to the Government.

5. Agreement to Guarantee Senior Loan – this section shall not be used as a guarantee on the senior loan is not offered.

6. Borrower and Borrower Application

The Borrower has completed and submitted to the Government a Borrower Application as shown in Exhibit I. Notwithstanding anything in this Commitment or in the Solicitation to the contrary, the Government shall not be obligated to make the Direct Loan or to guarantee the Senior Loan made to Borrower, unless and until the Borrower shall be approved for participation in such loan programs in accordance with the terms and conditions of the Borrower Application and all applicable law.

It is a condition of this Commitment that the Borrower under the Direct Loan and Senior Loan must be the same person or entity as the person or entity which has been approved by the Government as the owner of the Project and which has executed the Project Documents. In addition, the persons or parties exercising control over the operations of the Borrower and the Project must be the same persons and/or entities as approved by the Government in connection with its selection of the Selected Proposal. Once approved for participation in connection with this Project, the Borrower may not be changed without the prior written approval of the Government; provided, however, that the Government shall approve changes in the Borrower and/or its principals in accordance with the terms and conditions of the Solicitation.

So long as the Borrower is the owner of the Project, the Borrower shall be and remain a single asset entity, e.g., the Borrower shall not acquire any real or personal property other than the Project, operate any business other than the management of the Project, etc.

7. Senior Lender and Senior Lender Application

The proposed Senior Lender has completed and submitted to the Government a Senior Lender Application as shown in Exhibit J. Notwithstanding anything in this Commitment or in the Solicitation to the contrary, the Government shall not be obligated to guarantee the Senior Loan, unless and until the Senior Lender shall be approved for participation in the guaranteed loan program in accordance with the terms and conditions of the Senior Lender Application and all applicable law. Once approved for participation in connection with this Project, the Senior Lender may not be changed without the prior written approval of the Government.

8. Lockbox Agreement

At all times during the term of the Construction Loan, the Senior Loan and/or the Direct Loan, the Borrower, and the Project shall be subject to a Lockbox Agreement or other similar agreement in form and substance satisfactory to the Government which governs the receipt and disbursement of all rents, revenues, and other income from the Project ("Project Income"). Among other provisions, the Lockbox Agreement shall specifically provide for the application of Project Income as shown in Exhibit H.

9. Construction Loan

The Government hereby acknowledges and accepts the Construction Loan to be made by the Construction Lender to the Borrower in connection with the construction of the Project pursuant to the loan commitment provided by the Construction Lender to Borrower attached to this Commitment as Exhibit D. As a condition to Closing, the Government must receive evidence

that the terms and conditions of the Construction Loan have been acknowledged and accepted by the Senior Lender.

10. Special Terms and Conditions

This Commitment is subject to the Special Terms and Conditions set forth in Exhibit A. **[Complete Exhibit A as necessary based on Selected Proposal.]**

11. Conditions Precedent to the Government's Obligation to Make the Direct Loan and Guarantee the Senior Loan

In addition to the satisfaction of other conditions set forth in this Commitment or the Project Documents, the Government's obligation to make the Direct Loan and to guarantee the Senior Loan are subject to the Government's determination in its sole discretion, that as of the Closing Date, the following conditions have been satisfied:

- a. There is no debt or other obligation incurred by the Borrower, in connection with the Project or otherwise, secured or unsecured by the Project, other than the Senior Loan and the Direct Loan.
- b. All representations, warranties, and certifications made by the Borrower and the Senior Lender in connection with the Direct Loan and/or Senior Loan, as applicable, must be true in all material respects, including without limitation, representations, warranties, and certifications contained in the Borrower Application and Senior Lender Application.
- c. The Government must have reviewed and approved all agreements, documents, instruments, certificates, reports, surveys, papers, and other matters, which are subject to the Government's review and approval under this Commitment, the Direct Loan Documents, the Guaranty Agreement, and/or the Project Documents, including specifically but without limitation, the sources and uses of fund statements, the commitment for the Senior Loan, and the Senior Loan Documents.
- d. There must be no uncured defaults by the Borrower under the Construction Loan, this Commitment, or the Project Documents.
- e. As reflected in a final inspection report prepared by or on behalf of the Government, the Borrower must have completed the Project or a phase of the project in accordance with the Final Plans and the Project Documents (including without limitation, all amenities, landscaping, signs, and parking, and except for minor punchlist items for which sufficient funds have been reserved in a repair/completion escrow reserve fund as approved by the Government): (i) in a good and workmanlike manner; (ii) free and clear of any liens other than the lien of the Construction Loan and other liens as approved by the Government in connection with the Construction Loan; (iii) in compliance with all applicable requirements of government authorities having jurisdiction over the Project, including without limitation, building codes, zoning and subdivision requirements, fire and safety requirements, environmental requirements, the Fair Housing Act, and the Americans with Disabilities Act, and (iv) in accordance with the phasing approved by the Government. In addition, the Government must receive a certification from an authorized representative of the Borrower, the Borrower's architect, and the Borrower's general contractor, in form and substance satisfactory to

the Government that the Project has been completed substantially in accordance with the Final Plans and the requirements of the Project Documents.

- f. The Government must have received evidence of the availability of all public utilities necessary to the operation of the Project and true and correct copies of all operating licenses and permits, if any, for the Project.
- g. The Government must have issued or received copies (as required by the Project Documents) for all portions of the Project of an unconditional certificate of occupancy (or the equivalent) to the effect that the Project has passed all inspections and has received all approvals which are conditions precedent to the occupancy of the Project under the terms of the Project Documents and applicable law.
- h. The Senior Lender and/or Borrower must have delivered to the Government evidence, satisfactory to the Government in its sole discretion, that the Borrower has (i) made all equity contributions required to be made by the Borrower and (ii) fully funded all reserves and escrow required to be funded by the Borrower under the Project Documents.
- i. The Guaranty Agreement, the Intercreditor Agreement, the Lockbox Agreement, the Senior Loan Documents, and Direct Loan Documents must have been executed and delivered.
- j. The Special Terms and Conditions, if any, and such other conditions as reasonably required by the Government based on the final underwriting of the Direct Loan and Senior Loan must have been satisfied.

12. Notice of Default and Opportunity to Cure

The Borrower, the Senior Lender, and the Construction Lender will each be provided notice by the Government of any defaults of which the Government is aware by any of such parties under this Commitment, which if not cured would give the Government the right to terminate this Commitment; provided, however that the failure of the Government to provide a copy of a default notice to any party other than the party in default (or the failure of such party to actually receive a copy of a default notice) shall not affect the validity of any such default notice. Any of the nondefaulting parties shall have the right, but not the obligation, exercisable in its sole discretion, to cure such default, and will be provided a cure period which is thirty (30) days beyond the cure period given to the party in default under the terms of this Commitment (or in those cases in which the defaulting party is not provided any cure period, the nondefaulting parties shall have a cure period of 30 days from its receipt of the default notice) in which to cure the default.

13. Modifications and Amendments

This Commitment supersedes any and all prior commitments, agreements, provisions, offers and statements, whether written or oral, made by the Government or anyone acting with its authorization. No change, amendment, or modification of this Commitment shall be valid unless made in writing and signed by a duly authorized officer of the Government.

14. Cancellation and Termination of Commitment by the Government

The Government reserves the right to cancel this Commitment and to terminate its obligations under the Commitment at any time in any of the following circumstances:

- a. An uncured default under Section 11 of this Commitment
- b. The filing by or against the Borrower or Senior Lender or other persons required to execute any of the Direct Loan Documents or the Senior Loan Documents of: any petition in bankruptcy, trusteeship, insolvency, or reorganization; any action for the appointment of a receiver or trustee; or an assignment or arrangement for the benefit of creditors, which petition, appointment, assignment, or arrangement is not withdrawn, dismissed, canceled, or terminated prior to the Closing Date
- c. If Borrower or Senior Lender's business is discontinued or suspended for any reason prior to the Closing Date
- d. If there have been any material misrepresentations, material errors, or the withholding of material information incident to the Construction Loan, the Senior Loan, or Direct Loan contemplated by this Commitment, including without limitation, any information provided or in connection with the Borrower Application or Senior Lender Application
- e. If the Borrower or Senior Lender defaults on any other obligation to the Government
- f. Any transfer by Borrower of all or any part of this Commitment in violation of the terms and conditions of this Commitment.

15. Acceptance

One executed counterpart original of this Commitment must be received by the undersigned no later than 5:00 p.m. on _____, 20____, or this Commitment shall be deemed to have lapsed and the Government shall have no further obligation under this Commitment.

16. Survival

The terms of this Commitment will survive the closing and delivery of the Direct Loan and Senior Loan, except to the extent superseded by any terms of the Direct Loan Documents or Guaranty Agreement which conflict with the terms of this Commitment, in which case the terms of the Direct Loan Documents or the Guaranty Agreement, as applicable, will prevail.

17. Loan Costs and Expenses

The Government shall not pay any expense whatsoever in connection with the issuance of the Commitment or the closing of the Direct or Senior Loan transaction. Borrower and/or the Senior Lender shall be responsible for the payment of all costs and expenses incurred in connection with the preparation for and the closing of the Direct Loan and Senior Loan, as applicable, including without limitation, all appraisal fees, recording costs, license and permit fees, legal fees, and all title insurance and other insurance premiums required in connection with the loan transaction contemplated herein.

18. Assignment of Commitment

The Borrower shall not have any right to assign, transfer, participate, pledge, hypothecate, or encumber all or any part of Borrower's interest in this Commitment, except that the Borrower may assign this Commitment to the Senior Lender and/or Construction Lender upon the Government's prior written consent, subject to the terms of this Commitment.

19. Severability

If the Government chooses to waive any covenant, paragraph, or provision of this Commitment, or if any covenant, paragraph, or provision of this Commitment is construed by a court of competent jurisdiction to be invalid or unenforceable, it shall not affect the applicability, validity, or enforceability of the remaining covenants, paragraphs, or provisions.

20. Waiver by the Government

The failure or delay of the Government to insist upon strict performance of any term, condition, or requirement of this Commitment, or to exercise any right herein conferred, in any one or more instances, shall not be deemed a waiver or relinquishment of any term, condition, requirement, or right that the Government may have and shall not be deemed a waiver of any subsequent term, condition, requirement, or right.

21. Miscellaneous

- a. Any approval or consent of the parties required for any matter under this Commitment shall be in writing and shall not be unreasonably withheld or delayed unless expressly otherwise indicated in this Commitment.
- b. The paragraph headings herein are for information only and in no way limit, define, or modify the Borrower's, the Senior Lender's or the Government's rights and obligations under the provisions, covenants, terms, and conditions of this Commitment.
- c. All Exhibits to this Commitment are incorporated in this Agreement by reference.
- d. All of the agreements, terms, and conditions shall be binding upon and inure to the benefit of each of the parties, their respective successors, heirs, legal representatives, and permitted assigns.
- e. Time shall be of the essence with respect to the subject of this Commitment. No waiver of any of the terms and provisions of this Commitment, and no waiver of any default or failure to comply with this Commitment, shall be effective unless made by the Government in writing.
- f. Any notice required or permitted to be given shall be deemed to have been duly given when addressed and mailed by registered or certified United States mail to the applicable party at the address specified on Exhibit K, or to such other place as any of the parties may for themselves designate in writing to each of the other parties for the purposes of receiving notices.
- g. All personal pronouns used in this Commitment shall include the other genders whether used in the masculine, feminine, or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

If you have any questions, please feel free to contact _____ at () _____.

Very truly yours,

THE SECRETARY OF THE AIR FORCE

By: _____

Name: _____

Title:

ATTACHMENTS

- Exhibit A. Special Terms and Conditions of Direct Loan
- Exhibit B. Description of Leased Premises and Acquired Land
- Exhibit C. Form of Direct Loan Note and Security Instrument
- Exhibit D. Loan Commitment for Construction Loan
- Exhibit E. Loan Commitment for Senior Loan
- Exhibit F. Form of Guaranty Agreement
- Exhibit G. Form of Senior Loan Note and Security Instrument
- Exhibit H. Form of Intercreditor Agreement or Lockbox Agreement
- Exhibit I. Completed Borrower Application Form
- Exhibit J. Completed Senior Lender Application
- Exhibit K. Notice Address

The terms and conditions of this Commitment, including the attached exhibits, are hereby accepted and agreed to.

NAME OF BORROWER

By: _____

Name: _____

Title: _____

Date: _____, 20__

ACKNOWLEDGED AND AGREED TO:

NAME OF SENIOR LENDER

By: _____

Name: _____

Title: _____

Date: _____, 20__

NAME OF CONSTRUCTION LENDER

By: _____

Name: _____

Title: _____

Date: _____, 20__

EXHIBIT A

Special Terms and Conditions of Direct Loan

In addition to the terms and conditions set forth in the foregoing Commitment, the following terms and conditions shall govern the Government's obligation to make the Direct Loan:

EXHIBIT B

Description of Leased Premises

and

Acquired Land

[Attached]

[Insert Exhibit A of Appendix U here]

and

[Insert Exhibit A of Appendix X here (if applicable)]

EXHIBIT C

Form of Direct Loan Note and Security Instrument

[Attached]

[Insert Appendix N and Freddie Mac or Fannie Mae Documents here]

EXHIBIT D

Loan Commitment for Construction Loan

[Attached]

[To be provided by Successful Offeror]

EXHIBIT E

Loan Commitment for Senior Loan

[Attached]

EXHIBIT F

Form of Guaranty Agreement

This Exhibit will not be used as the government is not offering the Loan Guaranty.

EXHIBIT G

Form of Senior Loan Note and Security Instrument

[Attached]

[Insert Appendix S of RFP and Freddie Mac or Fannie Mae Documents here]

EXHIBIT H

Form of Intercreditor Agreement

or

Lockbox Agreement (if the Government is not providing a direct loan)

[Attached]

[Insert Appendix P or Appendix Q here as appropriate.]

EXHIBIT I

Completed Borrower Application Form

[Attached]

[To be provided by Successful Offeror.]

EXHIBIT J

Completed Senior Lender Application

[Attached]

[To be provided by Successful Offeror.]

EXHIBIT K

Notice Addresses

The Secretary of the Air Force:

Department of the Air Force
Deputy Assistant Secretary of the Air Force (Installations)
1665 Air Force Pentagon
Washington, DC 20330-1665

with copies to:

Department of the Air Force
Office of the General Counsel
Deputy General Counsel (Installations and Environment)
1740 Air Force Pentagon
Washington, D.C. 20330-1740

and

HQ AFCEE/HDP/Portfolio Management
2735 Louis Bauer Drive
Brooks City-Base, TX 78235-5133

and

Asset Manager
__th Civil Engineering Squadron
[Street Address]

Basename AFB, Basestate for each of the four bases

The Borrower:

The Construction Lender:

The Senior Lender: